

ALVERSON, TAYLOR, MORTENSEN & SANDERS
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d/b/a Trilogy Excursions

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

DAVID C. JAMES, JR.,

Plaintiffs,

vs.

TRILOGY CORPORATION, a foreign
corporation, dba TRILOGY EXCURSIONS,
DOES 1-10 and ROE CORPORATION 1-10,
inclusive,

Defendants.

Civil Case No.

3:18-cv-00010-MMD-WGC

STIPULATION AND ORDER TO
TRANSFER CASE TO THE
UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
HAWAII

Subject to the approval of the Court, the parties, by and through their undersigned counsel, hereby submit this Stipulation and Order to Transfer Case to the United States District Court for the District of Hawaii.

STIPULATION

1. WHEREAS, Plaintiff DAVID C. JAMES, JR., (“Plaintiff”) filed his Complaint for general negligence against Defendant TRILOGY CORPORATION, a foreign corporation, dba TRILOGY EXCURSIONS (“Defendant”), in the Ninth Judicial District of the State of Nevada, County of Douglas, on August 10, 2017.

1 2. WHEREAS, Plaintiff alleged that on August 11, 2015, Plaintiff was on a
2 boat operated by Defendant in the waters in Hawaii. Plaintiff alleged he sustained injuries
3 while on the boat excursion and that he received medical treatment at Maui Medical
4 Center, in Hawaii. Plaintiff alleged that he returned to Nevada following the incident to
5 continue his medical care. See generally, Plaintiff's Complaint.

6
7 3. WHEREAS, Defendant has represented to Plaintiff that Defendant is a
8 corporation duly incorporated in the state of Hawaii, with its principal place of business in
9 Lahaina, Hawaii. Defendant is a charter boat company which operates charter/tour vessels
10 strictly within the state of Hawaii.

11 4. WHEREAS, Defendant has represented to Plaintiff that Defendant has not
12 appointed an agent for service of process in the state of Nevada.

13
14 5. WHEREAS, Defendant has represented to Plaintiff that Defendant has no
15 officers, directors or employees residing or domiciled in the state of Nevada, nor is
16 Defendant contracted with persons residing in the state of Nevada to act on any of their
17 behalves with respect to marketing Defendant's services.

18 6. WHEREAS, Defendant has represented to Plaintiff that Defendant does not
19 have any offices or comparable facilities in the state of Nevada nor does Defendant have
20 any telephone listings or mailing addressed in the states of Nevada.

21
22 7. WHEREAS, Defendant has represented to Plaintiff that Defendant does not
23 have any bank accounts or other tangible, personal property in the state of Nevada.

24 8. WHEREAS, Defendant has represented to Plaintiff that Defendant does not
25 own or lease any real property in the state of Nevada.

26 9. WHEREAS, Defendant has represented to Plaintiff that Defendant does not
27 ship or transport products, goods or services into the state of Nevada.

28

1 10. WHEREAS, Defendant has represented to Plaintiff that Defendant does not
2 direct any of its advertising specifically toward the state of Nevada, nor does it advertise
3 in any publications that are directed primarily toward Nevada residents.

4 11. WHEREAS, Defendant has represented to Plaintiff that no meetings of
5 Defendant's Board of Directors or shareholders have been conducted in the state of
6 Nevada.

7 12. WHEREAS, Defendant has represented to Plaintiff that Defendant has not
8 applied for any permits or licenses from any governmental units in the state of Nevada.
9

10 13. WHEREAS, Defendant has represented to Plaintiff that Defendant
11 maintains a website, which permits limited interaction by visitors, which the main purpose
12 being to provide general information. The website is accessible to any person with access
13 to the World Wide Web and Defendant has never directed and/or targeted its website or
14 directly mailed its website to anyone in the state of Nevada.
15

16 14. WHEREAS, Defendant has represented to Plaintiff that Defendant's
17 website and the state of Nevada is not central to Defendant's business.

18 15. WHEREAS, Defendant has represented to Plaintiff that the acts or
19 omissions alleged by Plaintiff against Defendant are based solely upon the alleged
20 activities of Defendant occurring outside the state of Nevada.
21

22 16. WHEREAS, Defendant has represented to Plaintiff that Defendant's
23 employees and representatives, witnesses, initial treating providers, business records,
24 documents and evidence, are all located in Hawaii.

25 17. WHEREAS, Plaintiff has represented to Defendant that Plaintiff is a
26 resident of Douglas County, Nevada
27

28 18. WHEREAS, Defendant timely filed its Notice of Removal on January 5,

1 2018, and its Certificate of Interested Parties and errata to the Civil Cover Sheet on
2 January 8, 2018.

3 19. WHEREAS, Defendant timely filed its Rule 12(B)(2) Motion to Dismiss
4 for Lack of Personal Jurisdiction or, in the Alternative, Rule 12(B)(3) Motion to Dismiss
5 for Improper Venue and Motion to Transfer Venue, Notice of Filing Notice of Removal
6 and its Appearance of Counsel on January 11, 2018.

7
8 20. WHEREAS, Plaintiff filed his Certificate of Interested Parties on January
9 11, 2018.

10 21. WHEREAS, 28 U.S.C., section 1404(a) grants district courts the discretion
11 to transfer any civil action to any other district or division where it might have been
12 brought.

13
14 22. WHEREAS, the parties agree that Plaintiff could have brought this action
15 in the United States District Court for the District of Hawaii, because Defendant's
16 principal place of business, all evidence, witnesses and the alleged incident occurred in
17 Hawaii, making "a substantial part of the events or omissions giving rise to the claim"
18 making the venue in the district proper. See 28 U.S.C. 1391(b)(2),(c).

19 23. WHEREAS, the parties agree that they are subject to personal jurisdiction
20 in the United States District Court for the District of Hawaii.

21
22 24. WHEREAS, the parties agree that the agreement to transfer shall in no way
23 be construed to have any effect or waivers on the underlying litigation or merits of the
24 case.

25 25. WHEREAS, the parties agree that they shall both bear their own costs.

26 26. WHEREAS, for the convenience of the parties and their witnesses, and in
27 the interest of justice, the parties agree that venue in this action should be assigned to the
28

United States District Court for the District of Hawaii.

NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for the parties, that, subject to the approval of the Court, this case shall be transferred to the United States District Court for the District of Hawaii.

IT IS SO STIPULATED

DATED this 25th day of January, 2018

ALVERSON, TAYLOR
MORTENSEN & SANDERS

/s/ *David Mortensen*

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DATED this 25th day of January, 2018

CLOUSER HEMPEN WASICK
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/s/ *Justin Clouser*

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ORDER GRANTING STIPULATION AND ORDER TO TRANSFER VENUE

Having read and considered the Stipulation filed by the parties, and good cause appearing, IT IS HEREBY ORDERED that pursuant to 28 U.S.C., section 1404, for the convenience of the parties and witnesses and in the interest of justice, this case is **TRANSFERRED** to the United States District Court for the District of Hawaii.

PURSUANT TO STIPULATION, IT IS SO ORDERED:

DATED: January 25, 2018



UNITED STATES DISTRICT JUDGE

Respectfully submitted by:

ALVERSON, TAYLOR
MORTENSEN & SANDERS

/s/ David Mortensen

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